

## The Unreformed Canadian House of Commons

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La réforme des institutions fédérales canadiennes

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### Résumé de l'article

Le Parlement évolue constamment et si l'on veut qu'il soit efficace, il faut que ses pratiques reflètent l'évolution de la société. L'auteur propose des changements dans le processus législatif la surveillance de l'exécutif, la représentation et l'organisation de la Chambre des communes car la société et l'appareil gouvernemental se développent plus rapidement que les mécanismes de cette chambre.

## La réforme de la Chambre des communes

# The Unreformed Canadian House of Commons

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Robert J. JACKSON \*

*Le Parlement évolue constamment et si l'on veut qu'il soit efficace, il faut que ses pratiques reflètent l'évolution de la société. L'auteur propose des changements dans le processus législatif, la surveillance de l'exécutif, la représentation et l'organisation de la Chambre des communes car la société et l'appareil gouvernemental se développent plus rapidement que les mécanismes de cette chambre.*

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The task of reforming the federal House of Commons is unfinished. A balanced view, in my opinion, is that there has been remarkable progress in the past two decades but that there is still much to be done. The executive remains dominant, the institutions for parliamentary control weak and

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Members as a whole too docile. The House needs to strengthen its role in policy-making and in surveillance of the government<sup>1</sup>.

Reforming parliament is both a process and an end. It is never finished, but always proceeding toward the adaptation of institutions to their constantly changing environment. As the Special Committee on Standing Orders and Procedure argued in November 1982:

The reform of parliamentary procedure should be an ongoing process. Parliament is in a constant state of evolution, and if its practices are to be effective, they must be adapted when necessary to meet the changing needs of Parliament and reflect the changing conditions of society and the nation.<sup>2</sup>

In the last ten years alone there have been several major reports from Standing and Special Committees on Standing Orders and Procedure, The Royal Commission on Financial Management and Accountability, a Conservative Government Position Paper on Parliamentary Reform, as well as innumerable suggestions from the Canadian Bar Association, the Business Council on National Issues and practically every politician and commentator in the country. Members and critics will, and should, always demand changes in institutions and behaviour. This cannot be avoided. Gradually the reforms of one generation will be replaced by those of the next. The main issue today is that the reform process itself is in need of an overhaul. Too often reforms are piecemeal and contradictory. This problem can only be overcome by a general agreement by all concerned to focus on the goal of improving the effectiveness of parliament. In other words, diagnosis and prescription can only follow from a thorough knowledge of how the system works and an agreement on how it should work. There must also be an agreement on at least one goal — the House of Commons ought to be more important in the policy process than it has been in the past.

In this paper I take it for granted that Canadians wish to retain a Parliamentary/Cabinet system of government and not adopt a thorough-going Presidential/Congressional arrangement as in the United States. Many persuasive arguments for each system may be advanced, but I do not believe that we should adopt the ramshackle, «ungoverning» system of our

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1. A checklist of reform ideas around the world can be found in Ronald D. HEDLUND, «Organizational Attributes of Legislatures», *Legislative Studies Quarterly*, vol. IX, No. 1 (February 1984), p. 51-121. For a justification in Canada see Robert J. JACKSON, «Models of Legislative Reform: Diagnosis and Prescription», Unpublished paper delivered at conference «Le Contrôle de l'Administration et la Réforme Parlementaire», Montréal, 1984.

2. House of Commons: Special Committee on Standing Orders and Procedures, *Third Report*, p. 5.

neighbors. Given this perspective, it should come as no surprise that I do not support many of the utopian reforms which have been suggested for the House of Commons. One example would be that partisanship and party cohesion can be removed from Parliament. Some witnesses before reform committees have even suggested that more « free » (that is, non-party) votes should be allowed. This is sheer nonsense. In fact, MPs are « free » now to vote according to their wishes and consciences. The point is they don't choose to go against their parties. There are extremely few sanctions that can be used against them if they do. There are strong arguments too for retaining our cohesive party system. In reality, the United States Congress works along a four party system without discipline: (liberal Republicans and Democrats, conservative Republicans and Democrats). It disperses power so widely that it is not certain if anyone is in charge. Party groups coalesce and then disappear depending on the issue, regional concerns and pressure group activities. When there are no parties, group behaviour does not disappear. There will always be factions which members will follow in their choices of how to vote in the House of Commons. It is preferable to have them follow their own party's view rather than other groups with a narrower conception of the national interest, or as Lord Salisbury called them groups with a « paltry yelping shibboleth for a cry. »<sup>3</sup>

Fortunately, responsible Members of Parliament rarely support such utopian proposals. Since the late 1960s they have produced constructive methods for improving the House without diluting the system of responsible cabinet government or destroying the cohesive party system. The most important innovations have come in the committee system, in televising the plenary session and in the organization of the House itself.

### 1. The Permanent Committee System

Committee reform has come in two waves. After 1968 the Trudeau government abolished the old system of examining budgetary estimates on the floor of the House and sent them instead to standing committees. These new permanent committees became multi-functional: that is, each committee examined the legislation, as well as the estimates, and conducted investigations in their field of competence. Thus, the new system sharply reduced the financial discussions in plenary sessions and moved them to more

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3. For an extended discussion of party cohesion see Robert J. JACKSON and Michael ATKINSON, *The Canadian Legislative System* (Toronto: Gage, 1980), p. 199; and Robert J. JACKSON, *Rebels and Whips* (London: Macmillan, 1968).

specialized committees. In principle such committees should allow members to specialize and do a finer job in surveillance of the executive<sup>4</sup>.

The second wave of committee reform came in the 1980 Parliament with the development of committee « task forces ». The new special committees were to be pre-legislative organizations with very small memberships, enlarged budgets and current issues to discuss. Committees were set up on Federal-Provincial Fiscal Arrangements, Alternative Energy Supplies, North-South Relations, Employment Opportunities for the 1980s, The Disabled and Handicapped, Regulatory Reform, a National Trading Corporation and somewhat later on Pensions. These committees performed well. They travelled more, heard more witnesses, and published more impressive findings than most of the permanent committees.

## 2. Television

Academic surveys have shown that the House of Commons is considered to be the most important institution in the country<sup>5</sup>, and yet these same studies indicate that large numbers of Canadians feel alienated from Parliament and consider they have no say in governing. However, the more highly educated and knowledgeable the individuals are the less they possess these attitudes<sup>6</sup>. In an effort to ameliorate this situation the House decided to broadcast its proceedings. In October 1977 the House began to transmit its plenary sessions to the country — an impressive first in the world. While there are some difficulties with the way television works in the House and the manner in which members have responded, the public access to Parliamentary proceedings was unquestionably improved by this technology<sup>7</sup>.

## 3. Organization

On May 31, 1982 a special committee on Standing Orders and Procedure was set up to suggest further reforms for the House. While I shall

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4. For an overview of the procedural regime see John B. STEWART, *The Canadian House of Commons* (Montreal: McGill Queen's, 1977). For a behavioural analysis see Allan KORNBERG and William MISHLER, *Influence in Parliament* (Durham, N.C.: Duke University Press, 1977).

5. Data from the 1979 Canadian National Election Study and the Quality of Life Study 1979, Phase II conducted by the Survey Research Institute for Behavioural Research, York University.

6. *Id.*

7. An excellent summary is provided in a series of articles in *Parliamentary Government*, vol. 3, No. 1. Included are discussions on the House on T.V., The Parliamentary Press Gallery, and is Parliament good television?

discuss its other reports later, let me point out here that its third report was put into effect in the House in 1983, and again for 1984 on a provisional basis<sup>8</sup>. The new procedures are a distinct improvement over the old system. The reforms limit speeches, predetermine the length of sessions, provide earlier sitting times, increase opportunities for backbench debate and to some extent improve the accountability of government.

Finally, the House has an annual calendar and daily timetable. This change was warranted if only for the convenience of officials and MPs. However, meeting at regular periods also makes Parliament more accessible and understandable, and it removes the familiar ploy of threatening to extend the parliamentary session through the holidays to obtain the acquiescence of backbenchers to government policy.

Reducing the length of speeches from 40 to 20 minutes and dispensing with the ludicrous Standing Order 43, which was a great time-waster, has been welcomed by all. Most members do not have 40 minutes worth of systematic thought to divulge, and even fewer wished to listen to 40 minutes of monologue. The additional ten minutes of comment and debate at the end of each speech has improved the life of Parliament; exchanges have become more spontaneous and lively.

The most dramatic reform may have been the one which forced the government to respond to committee reports within 120 days if requested. Another valuable change required the automatic referral of reports from Crown agencies and other government organizations directly to Standing Committees for their perusal.

#### **4. Unfinished Reform Agenda**

With the flurry of activity after the raucous bell ringing episodes, many reformers hoped Parliament would complete the reform process. It did not. Ideas to make the House more efficient and effective have been left in abeyance by the government. Even the gleeful Special Committee on reform which produced eleven unanimous reports came to no conclusions about how to get their proposals accepted or even how to prevent the bells from ringing in the future.

Most of their reports, however, were well thought out and to some extent would redress the balance of power in Ottawa, a balance whose fulcrum has drifted too far away from Parliament Hill. Too much House

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8. House of Commons, *Permanent and Provisional Standing Orders*, 22 December 1982.

time is spent on a search for the dominant cliché which will impress the media. More concern should be given to making the House a workshop which is listened to by the executive.

Let us summarize the changes that ought to be accomplished under the headings — law-making, surveillance of the executive, representation and organization.

## 5. Law-Making

Attempts to convert the House into the major policy-making arena are doomed to failure, but more parliamentary input into the system is possible and desirable without turning Canada into a Presidential/Congressional system. Backbench Members of Parliament can play a greater role at the pre-legislative stages of policy development. This process has already begun with the initiation of the new « task forces » organization for some committees. The concept is good and should be expanded. While most significant legislation has to be introduced by the government there is no reason why the inspiration cannot come from Members. As I pointed out many years ago, committees are most successful when « first, the committee behaves in a non-partisan manner and, second, the committee's contribution is timed to have the maximum effect on government policy. »<sup>9</sup> The « task forces » have done precisely that. Concrete evidence is hard to establish, but the committee report on the Disabled and Handicapped stands out. As its authors boasted — « at the time this report is being tabled, there has been significant progress on 106 of the 142 recommendations which the Committee made in its two 1981 reports. »<sup>10</sup> Even Standing Committees have tried to emulate task force success in the 32<sup>nd</sup> Parliament. The committee on Indian and Northern Development, for example, clearly forced the government to act over treaty and land rights in Quebec<sup>11</sup>.

Bills which the government introduced should generally be more understandable. To accomplish this an explanatory memorandum could be tabled with each bill. The paper would describe the reasons for the legislation, its relation to other laws, the expected results and the anticipated regulations.

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9. JACKSON and ATKINSON, *supra*, note 3, p. 148.

10. House of Commons, *Progress Report on Special Committee on the Disabled and Handicapped*, p. 4.

11. Karen ALLEN, « An Effective Committee of the House of Commons — The Standing Committee on Indian and Northern Development », Essay for Political Science 406, Carleton University, 1983.

The government should also discipline itself in the organization and production of the legislation timetable. A list of bills should be tabled at the time of the Speech from the Throne. And, the government's success should to some extent be determined by the passage of these proposals. As well, the government should provide parliament with a list of its activities a month at a time rather than the present weekly notices. The present planning process is simply too short.

Subordinate legislation is another major problem. In principle the government should table the regulations to legislation along with the bills. The number of orders-in-council is growing by leaps and bounds. In 1982, 4 379 orders were passed by the government under statute or prerogatory authority<sup>12</sup>.

There is a need for a new Statutory Instruments Act. The Standing Joint Committee currently complains that the government restricts its scope by construing its mandate too narrowly and by denying access to administrative manuals. Another worthwhile proposal would be for each Standing Committee to review the merits of regulations. In practical terms this would mean that the Statutory Instruments Committee would continue its survey of the legality and propriety of subordinate legislation while also being responsible to warn subject-matter committees about the need for further investigations on grounds of policy.

Some technical bills, in particular tax legislation, could go directly to committees after First, and before Second, Reading. This would allow experts to be heard on legislation before the parties have to take sides on the basis of principle. Some non-controversial legislation could actually be heard in Second Reading Committees. In other words, there does not need to be one process for all types of legislation. More flexibility in the procedures would both streamline the process and allow greater MP and party criticism of the government at the appropriate stages of bill examination<sup>13</sup>.

## **6. Surveillance of the Executive**

The importance of democratic accountability lies in the need for citizens to be protected from arbitrary government action. This role is performed during elections by all citizens and politicians. Although such a function includes opposition tactics, embarrassing the government, motions, Question Periods, etc., parliamentary institutions are also important in overseeing

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12. Private correspondence from the Privy Council Office, January 1984.

13. JACKSON and ATKINSON, *supra*, note 3, Chapter 9.



finances and legislation. In fact, it is precisely in these fields that the House seems the weakest and requires the greatest reform today.

The appointment of the new special task forces improved surveillance to some extent. A critical approach was illustrated by the criticisms of the committee on Disabled and Handicapped which reported that « The Members can find little reason for this situation (Canada's poor progress in helping the disabled) other than lack of direction and coordination on the part of government, institutional, and community leaders who have the power to make changes. »<sup>14</sup> By increasing their knowledge and awareness of government programmes, MPs are better able to perform watchdog activity on the government.

However, it is in the financial field that new institutional reforms are needed most. Both the Lambert Royal Commission on Financial Management and Accountability and the Special Committee made important recommendations in this area<sup>15</sup>. As Ron Huntington and Claude-André Lachance pointed out in their paper, Parliament approves government expenditures at a rate of more than 150 million dollars an hour. And yet, taxation and the estimates of government expenditures are divided in such a way that the House cannot come to grips with their interrelationships. The committees are not even structured so that cross-departmental comparisons can be made. Each committee is compartmentalized and no committee has the capacity to analyze overall government revenues and expenditures in order to determine if reductions or increases in expenditure are warranted.

The Lambert Royal Commission's recommendation that Parliament should be presented with five year expenditure forecasts was adopted, but not the accompanying proposal for a national Finance committee. Yet, precisely such a committee is needed in order that government revenues and expenditures can be considered simultaneously. Even the existence of such a committee will not completely remove all the hesitation of Members to reduce government proposals for expenditure.

The problem is as much attitudinal as organizational. When members do serve on committees studying the estimates they have not been known to attempt to reduce government costs. They are usually concerned about the expenditures which will take place in their own constituencies and they

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14. House of Commons, *Obstacles : Report on Special Committee on Disabled and Handicapped*, p. 6.

15. Canada, Royal Commission on Financial Management and Accountability, *Final Report* (Ottawa: Supply and Services, 1979) and Douglas HARTLE, « The Report of the Royal Commission on Financial Management and Accountability », *Canadian Public Policy*, V, (Summer 1979), p. 377-378.

almost always want them increased<sup>16</sup>. Members must come to the realization that the estimates are important not because of any specific impact on their constituencies but because of the overall effect of the expenditures on the national economy. By 1980 the eleven Canadian governments consumed 43% of the GNE and this figure is likely to continue to grow slowly throughout this decade<sup>17</sup>. With figures of this magnitude it is imperative that methods of scrutinizing expenditures and their relationship to revenues be improved.

The concept of ministerial accountability has also been the subject of much discussion in recent years. However, most of the specific reform proposals have been aimed at making Deputy Ministers more accountable. The Lambert Commission, for example, wanted to make them accountable for the legality, efficiency and even the effectiveness of programmes. In my opinion, this would not be a viable move. As Paul Thomas pointed out, « There are real difficulties in delineating in practice where ministerial responsibility ends and deputy ministerial responsibility begins. »<sup>18</sup> Ambiguity is unavoidable. The final deliberation and responsibility must theoretically belong with the minister or the whole concept of accountability will be eroded. Consequently, this proposal should be shelved indefinitely; the ultimate accountability must be retained by the ministers and not shared with their deputies.

## 7. Representation Role

One of the most important roles for legislatures in western democracies is to represent constituency and national interests. This paper does not discuss reforms external to the House which could be instrumental in carrying out this function. Suffice it to say that reform of the electoral and party systems would dramatically effect the type of parliamentary representation, but internal reforms of the House are also significant.

The new special task force committees give the House another forum where the Canadian population can effectively be represented. Members of these task forces represented different geographical regions and the media paid much more attention to their deliberations and conclusions than to the reports of Standing Committees. Most of the task forces also produced

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16. JACKSON and ATKINSON, *supra*, note 3, Chapter 5, *passim*.

17. Robert J. JACKSON, « An Underdeveloped Art: Analyzing Interest Groups and Lobbying in Canada », Unpublished paper presented at Johns Hopkins University, 1983.

18. Paul THOMAS, « Practicable Reforms for Parliament », *Options*, vol. 4, No. 1 (January-February 1983), p. 18-22.

glossy and expensive reports; that of the task force on the Disabled and Handicapped appeared in a glossy format and had over 200 photographs. One member on the Alternative Energy committee put it this way; « We agreed that we needed an attractive package that would encourage people to open it and read it and eventually reach an understanding of at least the major parts of it. »<sup>19</sup>

The task forces travelled throughout Canada providing direct contact with the public. The figures are astonishing; in one year seven of them held 728 meetings (more than all 20 Standing Committees put together). Almost 3 000 witnesses and 796 interest groups were heard. There is little doubt that the new system has taken « Parliament to the people ».

On the whole, members of these committees feel positive about their contribution. Backbenchers are convinced that the committees represent a new forum for parliamentary activities and want them incorporated into the regular organization of the House.

Of course, there are also negative aspects about these new committees. They disappear after a final report. They are appointed for a task on which partisanship has not been expressed and they tend to be appointed to examine subjects with a high motherhood content. But, on the whole, the appearance of these new institutions has been a giant step forward. Unfortunately, the government is still quite wary of them. The reports, travel and staff are very expensive; the average committee has cost over a million dollars. As well, the new organizations weaken partisanship, helping to break down party lines. From the government's point of view this may be undesirable. From a reformist perspective, it is excellent. It is a valuable device for backbench input into the system and Members must not allow it to atrophy.

One of the fields about which the government has been most lax has been lobbying. As governments consume more and more of the GNP, lobbying or public relations has grown on the Hill and around Ottawa. In fact, it may be Canada's leading growth area. In a recent survey 75% of Chief Executive Officers said they had « frequent » contact with MPs<sup>20</sup>. The subject is a complicated one, but the so-called Coalgate affair clearly

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19. Parliamentary Centre for Foreign Affairs and Foreign Trade, « Task Forces: A Model for the Future? », *Parliamentary Government*, vol. 2, No. 3, (Summer 1981), p. 6.

20. Cited in JACKSON, « Lobbying in Canada », *supra*, note 17. For an extended discussion see Robert J. JACKSON, Doreen JACKSON and Nick BAXTER-MOORE, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy* (Toronto: Prentice-Hall, forthcoming), Chapter 12.

indicated that the government's conflict of interest guidelines for ministers, public servants and those who work in Crown Agencies are inadequate. A Commissioner of Ethics and a more thoughtful set of rules for all public servants is needed. The registration of lobbyists would provide information for future improvements in the system. In this regard the late Walter Baker's bill C255 should be revived. Lobbyists — a rose by any other name — need to be brought out into the open where they can be observed and held accountable for their actions.

## **8. Organization and Time Management**

In the past two years the House of Commons has improved its calendar, daily timetable and many other similar management areas. It has not, however, taken on some major issues such as those concerning the Speakership and closure or time allocation rules.

Presently, the Speaker is nominated by the government and the appointment legitimated by the House of Commons. It is this procedure which justifiably allows the opposition to question the Speaker's impartiality. Several reforms are possible to improve this situation. For years some reformers believed there should be a permanent Speaker — chosen by parliamentarians, not necessarily from the ranks of MPs. Currently, most reformers favour having the House elect the Speaker by secret ballot. This method, which would be similar to that used to elect the Pope, would minimize party discipline in making the appointment and legitimize the impartiality of the Speaker's role.

The election of an impartial Speaker would ensure that the House could do more of its work efficiently without the ever present charge of government bias. The bell ringing episodes during the first session of the 32<sup>nd</sup> Parliament were proof that new rules are required for much of parliamentary business. One statistical indication of the difficulties is that fully one-third of all parliamentary time during that long session was spent on procedural matters. (The recent sad display of obstructionism to prevent the language bill from passing in Manitoba is a current example of the same difficulty in the archaic rules). While one may debate the merits of omnibus bills such as the recent Liberal Energy package, there can be little compromise with the rule that majorities must be allowed to govern after a full hearing of the viewpoints of the opposition and public. A more impartial Speaker ought to be able to insist that votes in the House are held on a timely basis. If the opposition whips do not show up to vote, a time allocation motion should be placed on debating time and a vote held regardless of the whips' attendance.

A further minor, but possibly dramatic, change in in-House management could be achieved in the Internal Economy Committee. This Committee, which currently consists of only the Speaker and cabinet ministers, could be democratically reformed by the addition of several backbenchers <sup>21</sup>.

Further reforms would also be helpful in the standing committee system. Membership turnover continues to be too rapid to allow the development of expertise in committees. Committees continue to be manned by a small core of activists; in one recent classic case half the attendance of all the committee meetings for one session was accomplished by only 42 MPs. In this area new technical changes to the system have had only minor effect.

Committee chairmen in Ottawa are too weak and do not command enough respect in Parliament. If they received the same pay as Parliamentary Secretaries they would not constantly wish to change positions, as is now the case. The recent reforms in the Quebec National Assembly put that legislature ahead of Ottawa in this respect. The Chairmen of Committees are now paid an increased salary and three of them are selected from the opposition <sup>22</sup>. Moreover, the impressive results from the « task force » special committees illustrate the need for more professional staff to be assigned to both MPs and the permanent committee system. If MPs are given adequate resources their influence in executive-legislative relations will increase.

## 9. The Future

Recent reforms have made the House a better functioning organization. The salary, conditions and staff for MPs have been improved dramatically, raising morale and efficiency. New techniques for improving the representation function, surveillance of the executive and law-making have also been introduced. But more improvements are necessary. Society and the government apparatus itself continue to develop and change more rapidly than House mechanisms. Parliament must not continually lag in organizational innovation. Improvements such as I have suggested here, particularly in the areas of law-making and improved mechanisms for financial surveillance of the executive, can be introduced throughout the antiquated system to ensure that Parliament is in the foreground of political decision-making. For this to

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21. See Denis VAUGEOIS, *The National Assembly in Evolution*, (Quebec 1982), *passim*.

22. L'Assemblée nationale, *Les Règles de Procédure* (Québec, 1984). The July 1979 British Rules which allow Select Committees to carry out investigations without requiring a reference from the House would be another excellent procedure for the Canadian Committees to adopt.

happen, Members of Parliament themselves must desire change. What is most worrisome about present attitudes throughout liberal democracies generally, is that although Members of Parliament have the power to change their behaviour and the structures around themselves they do not choose to do so. The Italian author of the *Leopard* had the right maxim for them, « If things are going to stay the same around here — there are going to have to be some changes made. »

Organization is important. It affects Members' choice of activities and to an unmeasurable degree also influences public policy. The House of Commons must therefore be strengthened by equipping it with the proper procedures, staff and resources. Only when the above-listed reforms are made to bring the power of the legislature more in line with that of the cabinet and the public service will it be an autonomous and vigorous institution.